

ENTERED

December 22, 2021

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JEANIE HICKS,

§

Plaintiff,

§

VS.

§

CENLAR FSB,

§

Defendant.

§

CIVIL ACTION NO. 4:20-CV-1661

ORDER

Before the Court are United States Magistrate Judge Frances H. Stacy's Memorandum and Recommendation filed on November 29, 2021 (Doc. #29), Defendant's Objections (Doc. #30, Ex. 1), and Plaintiff's Objections (Doc. #32).¹ The Magistrate Judge's findings and conclusions are reviewed de novo. Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1); *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989). Having reviewed the parties' arguments and applicable legal authority, the Court adopts the Memorandum and Recommendation as to Plaintiff's claims and grants summary judgment for Defendant on the same.

However, because Defendant's "filing of its counterclaims" constitutes sufficient notice of acceleration under Texas law, the Court also grants summary judgment as to Defendant's counterclaim for foreclosure. *See Martinez v. Wells Fargo Bank, N.A. as Tr. for Park Place Sec., Inc., Asset-Backed Pass-Through Certificates Series 2004-MCW1*, No. 7:20-CV-104, 2021 WL 2764857, at *3 (S.D. Tex. Apr. 15, 2021) ("Plaintiffs received notice of default and intent to accelerate and, by virtue of Defendant's filing of its counterclaims, notice of acceleration.") and

¹ Finding good cause, the Court hereby GRANTS Defendant's Motion for Leave to File Objections (Doc. #30). Given Plaintiff's *pro se* status, the Court also accepts Plaintiff's untimely Response to the Memorandum and Recommendation as objections to the same.

Jimenez v. Bear Stearns Asset-Backed Sec. I Tr. 2005-HE11, Asset-Backed Certificates Series 2005-HE11, No. 3:19-CV-1026-G-BH, 2020 WL 1015825, at *5, n6 (N.D. Tex. Feb. 6, 2020), *report and recommendation adopted*, No. 3:19-CV-1026-G-BH, 2020 WL 998781 (N.D. Tex. Feb. 28, 2020) (same). Accordingly, the Court hereby GRANTS Defendant's Motion for Summary Judgment (Doc. #25) and this case is hereby DISMISSED.

It is so ORDERED.

DEC 21 2021

Date

The Honorable Alfred H. Bennett
United States District Judge

